

**Prepared Statement of the  
Federal Trade Commission**

**Before the  
United States Senate  
Committee on the Judiciary  
Subcommittee on Antitrust, Competition Policy and Consumer Rights**

**“Oversight of the Enforcement of the Antitrust Laws”**

**Washington, D.C.  
October 3, 2018**

Chairman Lee, Ranking Member Klobuchar, and Members of the Subcommittee, thank you for the opportunity to appear before you today. I am Joe Simons, Chairman of the Federal Trade Commission, and I am pleased to testify on behalf of the Commission and discuss some of our current competition enforcement activities and policy priorities.<sup>1</sup>

For over 100 years, the FTC has worked to ensure that American markets are open, vibrant, and unencumbered by unreasonable private or public restraints. With its dual missions to promote competition and protect consumers, the FTC applies antitrust and consumer protection law in a dynamic economy that is rapidly responding to new technology. The FTC is committed to understanding how technological developments and globalization can and should impact our law enforcement, research, and advocacy. As commerce and technology continue to evolve, companies may find newer ways to engage in consumer fraud schemes, deceptive advertising, and unfair practices that cause substantial consumer harm, with little or no benefit to consumers or competition; as well as mergers and conduct that harm, or threaten to harm, competition. Our agency tackles these challenges primarily through targeted law enforcement, although we also take full advantage of our unique set of policy tools. Our structure, research capacity, and committed staff enable the FTC to continue to meet its mandate of protecting consumers and competition in an ever-changing marketplace.

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<sup>1</sup> This written statement represents the views of the Federal Trade Commission. The oral presentation and responses to questions by Chairman Simons are his own, and do not necessarily reflect the views of the Commission or of any other Commissioner.

This testimony highlights a number of recent FTC competition enforcement matters,<sup>2</sup> including notable victories stopping anticompetitive mergers and conduct; public hearings that we are hosting on a variety of competition and consumer protection issues; and advocacy both domestically and abroad.

## **I. FTC Competition Enforcement**

The Commission seeks to promote competition through a rigorous, fact-intensive approach to law enforcement. The FTC has jurisdiction over a wide swath of the economy and focuses its enforcement efforts on sectors that most directly affect consumers and their wallets, such as health care, consumer products and services, technology, manufacturing, and energy. The agency shares primary jurisdiction with the Department of Justice in enforcing the nation's antitrust laws.

### **A. Maintaining Competition through Robust Merger Enforcement**

One of the agency's principal responsibilities is to prevent mergers that may substantially lessen competition. Since fiscal year 2013, premerger filings under the Hart-Scott-Rodino ("HSR") Act have increased more than 50 percent, bringing filings in the past fiscal year to the average over the past 20 years.<sup>3</sup> In the most recent fiscal year, the antitrust agencies received

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<sup>2</sup> For an overview of the FTC's efforts to protect consumers from unfair or deceptive acts or practices, see the Commission's recent testimony before the House Subcommittee on Digital Commerce and Consumer Protection of the Committee on Energy and Commerce (July 18, 2018), [https://www.ftc.gov/system/files/documents/public\\_statements/1394526/p180101\\_ftc\\_testimony\\_re\\_oversight\\_house\\_07182018.pdf](https://www.ftc.gov/system/files/documents/public_statements/1394526/p180101_ftc_testimony_re_oversight_house_07182018.pdf).

<sup>3</sup> The 20-year average extends back to FY 1998. Effective February 1, 2001, the HSR Act was amended to increase the size-of-transaction threshold from \$15 million to \$50 million. After that change took effect, the number of filings dropped from 4,926 in FY 2000 to 2,376 in FY 2001 and 1,187 in FY 2002. *See* FTC/DOJ Hart-Scott-Rodino Annual Report Fiscal Year 2007 at 2 n.2, [https://www.ftc.gov/sites/default/files/documents/reports\\_annual/30th-report-fy-2007/hsrreportfy2007\\_0.pdf](https://www.ftc.gov/sites/default/files/documents/reports_annual/30th-report-fy-2007/hsrreportfy2007_0.pdf).

more than 2,000 HSR filings.<sup>4</sup> The FTC work to challenge anticompetitive mergers has placed a considerable strain on the Commission's resources that were already limited. Although most reported transactions do not raise competitive concerns and are cleared expeditiously by the agencies, when available evidence gives the Commission reason to believe that a proposed merger likely would be anticompetitive, the Commission does not hesitate to intervene. Since the beginning of FY 2016, the Commission has challenged 55 mergers. Although many of these cases were resolved through divestiture settlements, in the last year alone, the Commission sued to block five mergers, and each of these matters required a significant commitment of resources to prepare for litigation. Two of those challenges ended successfully when the parties abandoned the transactions after the Commission initiated litigation.<sup>5</sup> For instance, after the FTC voted to sue the parties, Smuckers and ConAgra abandoned their proposed merger that likely would have substantially reduced competition for the sale of branded canola and vegetable oils.<sup>6</sup> In July, the district court in Washington, D.C. issued a preliminary injunction blocking Wilhelmsen Maritime Services' proposed acquisition of Drew Marine Group, a merger that would have combined the world's two largest suppliers of water treatment chemicals used by tankers, container ships, and

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<sup>4</sup> In FY 2017, the agencies received notice of 2,052 transactions, compared with 1,326 in FY 2013 and 2,201 in FY 2007. For historical information about HSR filings and U.S. merger enforcement, see the joint FTC/DOJ Hart-Scott-Rodino annual reports, <https://www.ftc.gov/policy/reports/policy-reports/annual-competition-reports>.

<sup>5</sup> FTC Press Release, *FTC Challenges Proposed Acquisition of Conagra's Wesson Cooking Oil Brand by Crisco Owner, J.M. Smucker Co.*, (Mar. 5, 2018), <https://www.ftc.gov/news-events/press-releases/2018/03/ftc-challenges-proposed-acquisition-conagras-wesson-cooking-oil>; *In re CDK Global & Auto/Mate*, Dkt. 9382 (Mar. 20, 2018), <https://www.ftc.gov/enforcement/cases-proceedings/171-0156/cdk-global-automate-matter>.

<sup>6</sup> FTC Press Release, *FTC Challenges Proposed Acquisition of Conagra's Wesson Cooking Oil Brand by Crisco Owner, J.M. Smucker Co.*, (Mar. 5, 2018), <https://www.ftc.gov/news-events/press-releases/2018/03/ftc-challenges-proposed-acquisition-conagras-wesson-cooking-oil>.

cruise ships.<sup>7</sup> The parties subsequently abandoned both transactions. Three other merger cases are still pending in litigation.<sup>8</sup>

As noted above, the Commission continues to resolve most horizontal merger challenges through negotiated settlements requiring divestitures that sufficiently replace lost competition. In the past year, for example, the FTC reviewed a number of horizontal mergers involving retail gas stations and convenience stores, and required divestitures to maintain competition in more than 150 local gasoline markets.<sup>9</sup> The Commission also took action to prevent harm from horizontal mergers involving a wide variety of products (such as cement,<sup>10</sup> agricultural chemicals,<sup>11</sup> medical instruments,<sup>12</sup> and pharmaceuticals<sup>13</sup>) and services (such as specialty veterinary services<sup>14</sup> and air ambulance services<sup>15</sup>).

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<sup>7</sup> *FTC v. Wilhelmsen*, No. 1:18-cv-00414 (D.D.C. July 21, 2018), <https://www.ftc.gov/enforcement/cases-proceedings/171-0161/wilhelm-wilhelmsen-et-al-ftc-v>.

<sup>8</sup> *FTC v. Sanford Health*, No. 17-3783 (8<sup>th</sup> Cir.) (merging parties' pending appeal of the district court's grant of a preliminary injunction), <https://www.ftc.gov/enforcement/cases-proceedings/171-0019/sanford-health-ftc-state-north-dakota-v>; *In re Otto Bock HealthCare North America, Inc.*, Dkt. 9378 (Dec. 20, 2017), <https://www.ftc.gov/enforcement/cases-proceedings/171-0231/otto-bock-healthcarefreedom-innovations>; *In re Tronox Ltd.*, Dkt. 9377 (Dec. 5, 2017), <https://www.ftc.gov/enforcement/cases-proceedings/171-0085/tronoxcrystal-usa>. The district court recently issued a preliminary injunction to prevent the consummation of the merger of Tronox and Cristal, pending the outcome of the Commission's administrative proceedings. *FTC v. Tronox Ltd.*, No. 1:18-cv-01622 (Sept. 5, 2018).

<sup>9</sup> *Alimentation Couche-Tard and CST Brands*, C-4618 (Jun. 26, 2017), <https://www.ftc.gov/enforcement/cases-proceedings/161-0207-docket-no-c-4618/alimentation-couche-tard-cst-brands>; *Alimentation Couche-Tard and CrossAmerica Partners*, C-4635 (Dec. 15, 2017), <https://www.ftc.gov/enforcement/cases-proceedings/1710184/alimentation-couche-tard-crossamerica-partners-matter>; *Alimentation Couche-Tard and CrossAmerica Partners*, C-4631 (Nov. 22, 2017), <https://www.ftc.gov/enforcement/cases-proceedings/1710207/alimentation-couche-tard-crossamerica-partners>; and *Seven & iHoldings Co.*, C-4641 (Jan. 19, 2018), <https://www.ftc.gov/enforcement/cases-proceedings/171-0126-c-4641/seven-i-holdings-7-eleven-sunoco>.

<sup>10</sup> *CRH plc*, C-4653 (Jun. 14, 2018), <https://www.ftc.gov/enforcement/cases-proceedings/171-0230-c-4653/crh-plc>.

<sup>11</sup> *Agrium Inc. et al.*, C- 4638 (Dec. 27, 2017), <https://www.ftc.gov/enforcement/cases-proceedings/161-0232/agrium-inc-potash-corporation-nutrien-ltd>.

<sup>12</sup> *Abbott Laboratories and Alere Inc.*, C-4625 (Sept. 28, 2017), <https://www.ftc.gov/enforcement/cases-proceedings/161-0084/abbott-laboratories-alere-inc>.

<sup>13</sup> *Amneal Holdings and Impax Laboratories*, C-4650 (Apr. 27, 2018), <https://www.ftc.gov/enforcement/cases-proceedings/181-0017-c-4650/amneal-holdings-impax-laboratories-matter>.

<sup>14</sup> *Mars, Inc. and VCA Inc.*, C-4633 (Aug. 30, 2017), <https://www.ftc.gov/enforcement/cases-proceedings/171-0057/mars-incorporated-vca-inc>.

The FTC also reviews vertical mergers and, when appropriate, acts to prevent harm to competition. For example, the Commission reviewed the merger of Northrop Grumman, a leading provider of missile systems to the Department of Defense (DOD), and Orbital ATK, a key supplier of solid rocket motors (SRM). Our competitive concern was that the acquisition would provide Northrop with the incentive and ability to harm competition for missile contracts by either withholding access to Orbital's solid rocket motors or increasing SRM prices to competitors. As a result, competitors would be forced to raise the prices of their missile systems, invest less aggressively to win missile programs, or decide not to compete at all, which, in turn, would decrease competitive pressure on Northrop. The acquisition also created a risk that the proprietary, competitively sensitive information of a rival SRM supplier supporting Northrop's missile system business could be shared with Northrop's vertically integrated SRM business. The FTC worked closely with the DOD in our review, and our proposed order imposes non-discrimination requirements and a firewall to preserve competition.<sup>16</sup>

One increasing challenge for the Commission in litigating competition cases is the need to hire testifying economic experts. Qualified experts are a critical resource in all of the FTC's competition cases heading toward litigation. Although the agency thus far has managed to allocate sufficient resources to fund the experts needed to support its cases and continues to develop strategies for managing expert costs more effectively, the FTC is reaching the point where it will be unable to meet these needs without compromising its ability to fulfill other aspects of the agency's mission. The Commission appreciates Congress's attention to its

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<sup>15</sup> *Air Medical Group, et al*, C-4642 (Mar. 7, 2018), <https://www.ftc.gov/enforcement/cases-proceedings/171-0217-c-4642/air-medical-group-kkr-north-america-amr-holdco>.

<sup>16</sup> *Northrop Grumman and Orbital ATK*, C-4652 (Jun.5, 2018), <https://www.ftc.gov/enforcement/cases-proceedings/181-0005-c-4652/northrop-grumman-orbital-atk>.

resource needs, including the need to continue to hire outside experts to support effective antitrust enforcement.

Finally, the Commission is committed to efficient and transparent merger review. In response to concerns that merger investigations are taking longer than they used to, the Bureau has developed a more robust system of tracking key milestones in the merger review process to determine whether this perception has merit and, if so, why some reviews may be taking longer. Armed with better information, the Bureau will assess what might be done to make the merger review process more efficient and less burdensome, while still ensuring the right outcome for consumers. The Bureau also has released a Model Timing Agreement, which adds greater transparency and certainty to the merger review process.<sup>17</sup>

#### **B. Combatting Anticompetitive Conduct in Health Care Markets**

The Commission maintains a robust program to identify and stop anticompetitive conduct, especially in critical health care markets. For over twenty years and on a bipartisan basis, the Commission has prioritized ending anticompetitive reverse payment agreements in which a brand-name drug firm pays its potential generic rival to give up its patent challenge and agree not to launch a lower cost generic product. Following the U.S. Supreme Court's 2013 decision in *FTC v. Actavis, Inc.*,<sup>18</sup> the Commission is in a much stronger position to challenge agreements of this type; recently, the district court on remand denied the defendants' motion for summary judgment in that case, clearing it for trial.<sup>19</sup> In addition, since *Actavis*, the FTC obtained

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<sup>17</sup> Bruce Hoffman, *Timing is everything: The Model Timing Agreement* (Aug. 7, 2018), <https://www.ftc.gov/news-events/blogs/competition-matters/2018/08/timing-everything-model-timing-agreement>.

<sup>18</sup> 570 U.S. 756 (2013).

<sup>19</sup> *FTC v. Actavis, Inc.*, No. 1:09-MD-2084 (N.D. Ga. Jun. 14, 2018).

a landmark \$1.2 billion settlement from the maker of sleep disorder drug Provigil,<sup>20</sup> and other manufacturers have agreed to abandon anticompetitive agreements of this type.<sup>21</sup> Currently, the FTC has three additional matters pending in litigation challenging reverse payment agreements.<sup>22</sup>

The Commission also has challenged anticompetitive unilateral conduct by drug manufacturers to maintain a monopoly, such as abuse of government process through sham litigation or repetitive regulatory filings intended to slow the approval of competitive drugs.<sup>23</sup> Here too, the Commission recently had a major victory when a federal court ruled on the basis of a full trial record that AbbVie Inc. used sham litigation to illegally maintain its monopoly over the testosterone replacement drug Androgel, and ordered \$493.7 million in monetary relief to those who were overcharged for Androgel as a result of AbbVie's conduct.<sup>24</sup> This case represents the first time any court has found that sham litigation violated Section 2 of the Sherman Act since

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<sup>20</sup> Press Release, *FTC Settlement of Cephalon Pay for Delay Case Ensures \$1.2 Billion in Ill-Gotten Gains Relinquished; Refunds Will Go To Purchasers Affected by Anticompetitive Tactics* (May 28, 2015), <https://www.ftc.gov/news-events/press-releases/2015/05/ftc-settlement-cephalon-pay-delay-case-ensures-12-billion-ill>.

<sup>21</sup> Joint Motion for Entry of Stipulated Order for Permanent Injunction, *FTC v. Allergan plc*, No. 17-cv-00312 (N.D. Cal. Jan. 23, 2017), <https://www.ftc.gov/enforcement/cases-proceedings/141-0004/allergan-plc-watson-laboratories-inc-et-al>; Stipulated Order for Permanent Injunction, *FTC v. Teikoku Pharma USA, Inc.*, No. 16-cv-01440 (E.D. Pa. Mar. 30, 2016), <https://www.ftc.gov/enforcement/cases-proceedings/141-0004/endo-pharmaceuticals-impax-labs>.

<sup>22</sup> *In re Impax Laboratories, Inc.*, Dkt. 9373 (complaint filed Jan. 23, 2017); *FTC v. Allergan plc*, No. 17-cv-00312 (N.D. Cal. Jan. 23, 2017); Notice of Appeal, *FTC v. Abbvie Inc.*, No. 14-cv-5151 (E.D. Pa. Sept. 8, 2014), <https://www.ftc.gov/enforcement/cases-proceedings/121-0028/abbvie-inc-et-al> (appealing dismissal of reverse payment claim to Third Circuit).

<sup>23</sup> *FTC v. Abbvie Inc.*, No. 14-cv-5151 (E.D. Pa. Sept. 8, 2014), <https://www.ftc.gov/enforcement/cases-proceedings/121-0028/abbvie-inc-et-al>; *FTC v. Shire ViroPharma Inc.*, No. 17-cv-131(D. Del. Feb. 7, 2017), <https://www.ftc.gov/enforcement/cases-proceedings/121-0062/shire-viropharma>.

<sup>24</sup> Statement of FTC Chairman Joe Simons Regarding Federal Court Ruling in *FTC v. AbbVie* (June 29, 2018), <https://www.ftc.gov/news-events/press-releases/2018/06/statement-ftc-chairman-joe-simons-regarding-federal-court-ruling>.



the U.S. Supreme Court first recognized this legal theory in *Professional Real Estate Investors, Inc. v. Columbia Pictures Industries, Inc.*, and it is a significant win for consumers.<sup>25</sup>

Nevertheless, the FTC's antitrust enforcement program has faced some setbacks. In 2017, the FTC filed a complaint in federal district court charging Shire ViroPharma Inc. with violating the antitrust laws by abusing government processes through a campaign of serial, repetitive, and unsupported filings with the U.S. Food and Drug Administration (FDA) and courts to delay the FDA's approval of generic Vancocin capsules.<sup>26</sup> Vancocin capsules are used to treat *C.difficile*-associated diarrhea, or CDAD, a sometimes life-threatening bacterial infection. The FTC alleged that Vancocin capsules are not reasonably interchangeable with any other medications used to treat CDAD, and that because of ViroPharma's actions, consumers and other purchasers paid hundreds of millions of dollars more for their medication.

In March of this year, the district court in Delaware ruled that ViroPharma's repetitive and baseless petitions to the FDA amounted to sham petitioning that was not protected activity under the *Noerr-Pennington* doctrine; unfortunately, however, the court nonetheless dismissed the FTC's monopolization complaint, ruling that the agency failed to adequately plead an imminent violation of antitrust law that would merit a permanent injunction under Section 13(b) of the FTC Act. The FTC has appealed this ruling to the Third Circuit, noting that no court in the

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<sup>25</sup> 508 U.S. 49 (1993). The Commission also recently filed an amicus brief in private litigation involving counterclaims of sham litigation, urging the court not to expand *Noerr-Pennington* protection to all patent infringement suits brought under the provisions of the Hatch-Waxman Act. Fed. Trade Comm'n Brief as *Amicus Curiae*, *Takeda Pharmaceutical Co. v. Zydus Pharmaceuticals*, (D.N.J. filed Jul. 2, 2018), <https://www.ftc.gov/policy/advocacy/amicus-briefs/2018/06/takeda-pharmaceutical-company-limited-et-al-v-zydus>.

<sup>26</sup> FTC v. Shire ViroPharma, No. 1:17-cv-00131 (D. Del. Feb. 7, 2017), <https://www.ftc.gov/enforcement/cases-proceedings/121-0062/shire-viopharma>

45 years since the enactment of Section 13(b) has required the FTC to meet this more stringent standard for imminence of harm.<sup>27</sup>

The Commission is also attentive to situations where health care firms engage in conduct that restrains competition for employees, such as anticompetitive information exchanges and other collusive practices by employers in labor markets. For example, in July, the FTC charged three parties—a Texas company that provides therapists to home health agencies, the company’s owner, and the former owner of a competing staffing company—with violating the antitrust laws. The Commission alleged that the parties violated the FTC Act by agreeing to reduce rates paid to therapists and by inviting other competitors to join their collusive scheme.<sup>28</sup> Fortunately, the FTC and Texas Attorney General were successful in stopping this conduct quickly. Just as American consumers deserve robust competition among producers who set prices for the goods they buy, American workers deserve robust competition among potential employers who determine their wages. This case highlights an important message of the October 2016 joint DOJ/FTC guidance for human resources professionals: competition is essential to well-functioning markets, including job markets.<sup>29</sup>

### **C. Monitoring Technology Firms**

From smart appliances and smart cars to mobile devices and search platforms, the widespread use of technology and data is changing not only the way we live, but also the way firms operate. Although many of these changes offer consumer benefits, they also raise complex

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<sup>27</sup> *FTC v. Shire ViroPharma Inc.*, No. 18-1807 (3d Cir. 2018).

<sup>28</sup> *Your Therapy Source, et al.*, No. 171 0134 (Jul. 31, 2018), <https://www.ftc.gov/enforcement/cases-proceedings/171-0134/your-therapy-source-neeraj-jindal-sheri-yarbray>.

<sup>29</sup> FTC and Department of Justice, Antitrust Guidance for Human Resource Professionals (Oct. 2016), <https://www.ftc.gov/public-statements/2016/10/antitrust-guidance-human-resource-professionals-department-justice>. The agencies also published a list of red flags for employment practices to help identify potential antitrust law violations.

and sometimes novel competition issues. Given the important role that technology companies play in the American economy, it is critical that the Commission—in furthering its mission to protect consumers and promote competition—not only understand current and developing business models, but also scrutinize incumbents’ conduct to ensure that they abide by the same rules of competitive markets that apply to any company. When appropriate, the Commission will take action to counter the harmful effects of proposed transactions and coordinated or unilateral conduct by technology firms.<sup>30</sup>

## II. Competition Policy Work

Although vigorous law enforcement is the primary tool the Commission uses to promote competition and protect consumers, we take advantage of a variety of research and advocacy tools to stay current with emerging trends in our dynamic economy, study business developments, and advocate for policies that eliminate unreasonable restrictions on competition.

In June, Chairman Simons announced a new series of public hearings—*Hearings on Competition and Consumer Protection in the 21<sup>st</sup> Century*—to consider whether broad-based changes in the economy, evolving business practices, new technologies, and international developments warrant adjustments to competition and consumer protection law, enforcement priorities, and policy.<sup>31</sup> This initiative is modeled on a similar effort in 1995 by former FTC Chairman Bob Pitofsky, which was the first step in establishing the FTC as a key modern center for competition “R&D,” and led to a well-received two-volume staff report, *Anticipating the 21<sup>st</sup>*

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<sup>30</sup> See, e.g., *In re DraftKings, Inc.*, No. 1610174 (FTC June 19, 2017), [https://www.ftc.gov/system/files/documents/cases/docket\\_no\\_9375\\_draftkings\\_fanduel\\_part\\_3\\_complaint\\_final\\_redacted\\_public\\_version.pdf](https://www.ftc.gov/system/files/documents/cases/docket_no_9375_draftkings_fanduel_part_3_complaint_final_redacted_public_version.pdf).

<sup>31</sup> FTC, *Hearings on Competition and Consumer Protection in the 21<sup>st</sup> Century*, <https://www.ftc.gov/policy/hearings-competition-consumer-protection>; see also FTC Press Release, *FTC Announces Hearings On Competition and Consumer Protection in the 21<sup>st</sup> Century* (June 20, 2018), <https://www.ftc.gov/news-events/press-releases/2018/06/ftc-announces-hearings-competition-consumer-protection-21st>.

*Century*, which presented analyses and recommendations on competition and consumer protection policy, respectively.<sup>32</sup> Similarly, through the series of hearings that began on September 13, the Commission is devoting significant resources to refresh and, if warranted, renew its thinking on a wide range of cutting-edge competition and consumer protection issues.<sup>33</sup> The hearings kicked off last month at Georgetown University Law Center, with opening sessions on market competitiveness, enforcement policy, and the regulation of consumer data. The Commission approaches this effort with an open mind, and we are open to using what we learn from the hearings to more effectively carry out our mission to protect consumers and competition.

The Commission will also continue to look for opportunities to issue joint guidance with our antitrust partners at the Department of Justice. Last year, the agencies issued updated Antitrust Guidelines for the Licensing of Intellectual Property, which explain how the federal antitrust agencies evaluate licensing and related activities involving patents, copyrights, trade secrets, and know-how. This update modernizes the agencies' 1995 IP Licensing Guidelines, ensuring that they continue to provide useful guidance to the public and the business community about the agencies' enforcement approach to intellectual property licensing.

The FTC also engages in competition advocacy, providing comments to state legislatures, state and federal agencies, and other policymakers. Competition advocacy is particularly effective in addressing market restraints imposed by governments themselves, such as excessive state occupational licensing requirements, where the likely effects on competition and other

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<sup>32</sup> FED. TRADE COMM'N STAFF, *ANTICIPATING THE 21ST CENTURY: COMPETITION AND CONSUMER PROTECTION POLICY IN THE NEW HIGH-TECH, GLOBAL MARKETPLACE* (1996).

<sup>33</sup> See Prepared Remarks of Chairman Simons Announcing the Competition and Consumer Protection Hearings (June 20, 2018), [https://www.ftc.gov/system/files/documents/public\\_statements/1385308/prepared\\_remarks\\_of\\_joe\\_simons\\_announcing\\_the\\_hearings\\_6-20-18\\_0.pdf](https://www.ftc.gov/system/files/documents/public_statements/1385308/prepared_remarks_of_joe_simons_announcing_the_hearings_6-20-18_0.pdf).

social objectives like employment may not be adequately understood by policy makers.<sup>34</sup> For example, the FTC’s Economic Liberty Task Force recently released a policy paper entitled *Policy Perspectives: Options to Enhance Occupational License Portability*. This paper assesses various approaches that state licensure boards, professional organizations, state legislatures, and others may consider in developing effective licensure portability initiatives.<sup>35</sup> American workers, employers, consumers, and our economy as a whole will benefit from eliminating unnecessary and overbroad licensing requirements that impose costs, limit competition, and are not needed to protect consumer health and safety.

The FTC also relies on its expertise in health care competition to identify policies that impose unnecessary burdens on competition to the detriment of consumers. For instance, the FTC recently responded to the Department of Health and Human Services’ request for comment on its *Blueprint to Lower Drug Prices and Reduce Out-of-Pocket Costs*, focusing on two topics: misuse of Risk Evaluation and Mitigation Strategies (REMS) programs and biologic competition. The FTC supports well-crafted regulatory and legislative actions to correct the misuse of REMS programs. Today, brands can misuse REMS restrictions to prevent or delay generic firms from obtaining FDA approval for lower cost drugs, and may place voluntary limits on drug distribution that deny potential generic competitors access to the samples they need for bioequivalence testing. In addition, the Commission’s comment explains how certain FDA regulations may create unnecessary barriers to biosimilar and interchangeable competition, and

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<sup>34</sup> See Prepared Statement of the Federal Trade Commission on Competition and Occupational Licensure before the Subcommittee on Regulatory Reform, Commercial and Antitrust Law, Judiciary Committee, House of Representatives, Washington D.C. (Sept. 12, 2017), [https://www.ftc.gov/system/files/documents/public\\_statements/1253073/house\\_testimony\\_licensing\\_and\\_rbi\\_act\\_sept\\_2017\\_vote.pdf](https://www.ftc.gov/system/files/documents/public_statements/1253073/house_testimony_licensing_and_rbi_act_sept_2017_vote.pdf).

<sup>35</sup> FTC Press Release, FTC Staff Report Examines Ways to Improve Occupational License Portability Across State Lines (Sept. 24, 2018), <https://www.ftc.gov/news-events/press-releases/2018/09/ftc-staff-report-examines-ways-improve-occupational-license>.

recommends that the FDA reconsider its naming guidance for biologics and expedite the approval process for interchangeable biosimilars.<sup>36</sup>

### **III. International Cooperation**

In addition to its domestic programs, the FTC engages in significant international work. On the competition side, with the expansion of global trade and the operation of many companies across national borders, the FTC and DOJ increasingly engage with foreign antitrust agencies to ensure close collaboration on cross-border cases and convergence toward sound competition policies and procedures.

Putting these principles into practice, the FTC effectively coordinates reviews of mergers and cases of potential unilateral anticompetitive conduct under concurrent review with its international counterparts to achieve effective, sound, and consistent outcomes. For example, in the recent merger of medical device makers Abbott Laboratories and St. Jude Medical, Inc., Commission staff worked cooperatively with the staff of antitrust agencies in Brazil, Canada, China, the European Union, Israel, Korea, and South Africa, including with respect to the remedy and divestiture package.

The U.S. antitrust agencies also facilitate dialogue and promote convergence through multiple channels, including bilateral relations with foreign competition agencies and an active role in multilateral competition organizations. For example, in 2018, we held high-level bilateral meetings with counterparts from China's antitrust authorities to promote sound practice and process in antitrust investigations. Our discussion topics included procedural fairness, interagency cooperation, and antitrust treatment of the exercise of intellectual property rights.

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<sup>36</sup> FTC Press Release, FTC Submits Statement to HHS on Its Blueprint to Lower Drug Prices (Jul. 17, 2018), <https://www.ftc.gov/news-events/press-releases/2018/07/ftc-submits-statement-hhs-its-blueprint-lower-drug-prices>.

The FTC will support the continued development of such initiatives, including recent consultations with EC Competition Commissioner Vestager and her senior team, and upcoming consultations with our counterparts from Canada and Mexico.

In addition, the FTC plays a key role in multilateral fora dedicated to facilitating dialogue and convergence toward sound competition policy and enforcement. For example, the FTC led the development, and is now promoting the implementation, of the International Competition Network's (ICN) Guidance on Investigative Process, the most comprehensive agency-led effort to articulate principles and practices of procedural fairness in antitrust investigations. We also are heading a project aimed at further developing the ICN's flagship, its Recommended Practices for Merger Notification and Review Procedures, which has resulted in more streamlined review of cross-border transactions.

When appropriate, the FTC also works with other U.S. government agencies to ensure that competition-related issues that also implicate broader U.S. policy interests, such as the protection of intellectual property and non-discriminatory treatment towards U.S. companies, are addressed in a coordinated and effective manner. For example, the FTC participated in negotiating the relevant chapters of NAFTA, was a member of the U.S. team involved in shaping G20 and G7 outcomes on digital economy issues, and has been part of interagency groups that addressed economic and trade issues with China and Korea.

Last year, the FTC and DOJ issued updated Antitrust Guidelines for International Enforcement and Cooperation to provide transparent guidance to the business community on our international antitrust enforcement and cooperation policies, including on the territorial scope of antitrust investigations and remedies.

#### **IV. Conclusion**

As the members of this Subcommittee know, competitive markets are the foundation of our economy, and effective antitrust enforcement helps ensure that those markets function well and benefit both consumers and businesses. Thank you for this opportunity to share highlights of the Commission's recent enforcement, research, and advocacy work to promote competition and protect consumers.